IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.2688 OF 2005

Rajesh Shroff and others .. Petitioners
v/s.
A.K.Bal and others .. Respondents

Mr.Shyam Diwan, Senior Counsel with Mr.and Mr.Harihar Bhave and Mr.Santosh Pawar i/by M/s.Bhave & Co. for the petitioners.

Mr.B.A.Desai, Additional Solicitor General of India with Mr.S.M.Shah and Ms.S.V.Bharucha for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 3RD MAY, 2006.

P.C.

We heard Mr.Shyam Diwan, senior counsel for the petitioners and Mr.B.A.Desai, Additional Solicitor General of India.

2. Pursuant to the show-cause notice dated 27th May, 2002 issued by the respondent No.1, the adjudication order dated 17th June, 2003 came to be passed by him. The petitioners have already filed appeals being appeal No.227 of 2003 and 228 of 2003 before the Appellate Tribunal for Foreign Exchange, Ministry of Law, Justice and Company Affairs, Government of India, New Delhi. Now, by filing this writ petition in the month of October, 2005, the petitioners seek to impugn the show-cause notice dated 27th May, 2002 and the order in original dated 17th June, 2003.

3. Mr.B.A.Desai, Additional Solicitor General raised the preliminary objection about maintainability of the present writ petition on the ground that the petitioners have already availed of the alternative remedy of appeal in challenging the order in original dated 17th June, 2003.

4. Mr.Shyam Diwan, senior counsel for the petitioners in response thereto submitted that in two other writ petitions being writ petition Nos.2298 of 2005 and 774 of 2005 wherein the issue had been raised regarding the competence and authority of Mr.A.K.Bal, Special Director of the Enforcement, Mumbai who issued the show-cause notices under the Foreign Exchange Management Act, 1999, rule has been issued. The senior counsel submitted that in both these matters, pursuant to the show-cause notices, order in original was passed by the Special Director of Enforcement. He, therefore, submitted that the present writ petition be also admitted.

5. We are not impressed by the submission of the senior counsel for the petitioners. As already noticed above, pursuant to the show-cause notice dated 27th May, 2005, the respondent No.1 commenced the adjudication proceedings and concluded the same by passing the adjudication order on 17th June, 2003. That the petitioners have preferred appeals against the said order in original before the Appellate Tribunal for Foreign Exchange is not

in dispute. In our considered view, the remedy of appeal already availed of by the petitioners much before filing of the present writ petition is adequate and efficient and there is nothing extraordinary that justifies the invocation of the extraordinary jurisdiction at this distance of time. In writ petition Nos.2298 of 2005 and 774 of 2005, it is true that this court issued rule where order in original has already been passed pursuant to the show-cause notice but in those cases, appeals have not been preferred by the parties. In the present case, aggrieved by the order in original dated 17th June, 2003, two appeals were preferred by the petitioners way back in the year 2003. These appeals are pending. More than two years thereafter, the present writ petition has been filed challenging the competence and authority of respondent No.1 in issuing the show-cause notice. We are satisfied that the writ petition does not deserve to be entertained for the reasons indicated above and is, accordingly, dismissed in limine.

6. The contentions raised in the writ petition may be agitated in the appeals preferred by the petitioners. If the petitioners have not raised those grounds in the memo of appeal, they shall be at liberty to seek amendment in the memo of appeal in that regard.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)